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PATENT
1504-1015

IN THE U.S. PATENT AND TRADEMARK OFFICE

In re application of

Roy HANSSON

Conf. 3524

Application No. 10/022,373

Group 3761

Filed December 20, 2001

Examiner M. Kidwell

ABSORBENT ARTICLE WITH BELT
PORTIONS HAVING INDICIA

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Assistant Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

November 4, 2005

Sir:

Appellant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

A Notice of Appeal is filed herewith.

The review is requested for the reasons advanced on the attached sheets:

Respectfully submitted,

YOUNG & THOMPSON

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REASONS IN SUPPORT OF REQUEST FOR REVIEW

The Official Action points out that the 37 CFR §1.131 declarations filed on May 25, 2005 are ineffective to overcome the HJORTH reference, as the scope of the declarations is not commensurate with the scope of the claims. Specifically, the Examiner states that the "claimed invention refers to a first belt portion carrying first fastening means which allow the belt portions to fasten together around the waist of the wearer", which is not reflected in the filed declarations.

It is respectfully submitted that Exhibit A of the 37 CFR §1.131 declaration, in the section entitled "Description" states in the first line that "when the belt is fixed around the waist of a user...". Consequently, it is readily apparent that the belt is fastened around the waist of a wearer. In addition, it can be seen from the left-hand figure in Exhibit A that the inventive article has two belt portions. These must correspond to the first and second belt portions referred to in the claims on appeal.

Therefore, it remains to establish, whether the exhibits of the declaration disclosed a "first fastening means" as required by claim 5. In this regard, it is clear from Exhibit A that the belt portions are fixed around the waist of a user. Consequently, it is necessary that the belt comprise fastening means, otherwise the belt portions could

not be fixed around the waist of the user. Belt portions cannot be fixed to one another without the use of fastening means.

It is respectfully urged that although the declarations may not comprise exactly the same wording as the claim, all the essential features of the herein-claimed invention were in fact present in the invention as made prior to September 13, 2000. It should be readily apparent, that the fastening means do not form the core of the invention, and their presence will be understood as being implicit, indeed necessary, by a person having ordinary skill in the art. In this regard, the Primary Examiner's attention is respectfully directed to *In re Spiller*, 182 USPQ 614 (CCPA 1974), wherein the Court stated that since the purpose of a Rule 131 showing is to establish broadly possession of the invention, it is proper to consider obviousness of the differences between what is shown and what is claimed, because possession of what is shown carries with it possession of variations and adaptations which would, at the same time, be obvious to one skilled in the art. Similarly, in concluding that an obviousness analysis was proper under Rule 131, the Court ruled that certainly "appellants should not be required to submit facts under Rule 131 showing that they reduced to practice that which is obvious...for the purpose of antedating a reference." See *Tronzo v. Biomet Inc.*, 41 USPQ2d 1403 (FLA. 1996).

In the instant case, it is respectfully submitted that fastening means on belt portions of an absorbent article in order to fasten the belt portions together around a waist of a wearer, are obvious variations and adaptations to one of ordinary skill in the art. Consequently, it is believed that the 37 CFR §1.131 declarations of record are effective to antedate the HJORTH reference.

It should be further pointed out that claim 5 calls for each indicium of the first belt portion to be symmetrically disposed in a longitudinal section of the belt portions with the corresponding indicium on the second belt portion. Such a characteristic feature is neither disclosed, nor suggested by the HJORTH reference. Indeed, Figure 1 of the patented reference does not specify the exact disposition of the two indicia and does not require that they be symmetrically disposed in a longitudinal direction. In fact, it would appear from Figure 1 of the patented reference that the two belts have different lengths, thereby suggesting that the indicia are not symmetrically disposed. Page 5, first paragraph of the original specification discloses that the belt portions (9, 10) are each provided with at least one indicium (12), and that the indicia on the opposite belt portions are symmetrically placed in the longitudinal direction of the belt portions at a certain distance from the attachment (13) of each belt portion to the rear portion of

the absorbent article. Thus, each indicium (12) on one belt portion (9) has its corresponding indicium on the opposite belt portion (10), placed at essentially the same distance from the attachment (13) of each belt portion to the rear portion (6) of the article. Upon application of the article, the belt portions are first attached around the waist of the wearer and the indicia on the different belt portions are fitted against each other and are leveled against the navel of the user. Thereby, it is ensured that the center line (14) of the article is located at the center of the back of the user, since the position of the navel gives the center position on the front side of the user. It follows that the share of the belt portion extending in one direction from the attachment (13) of the belt portion (9) to the rear portion (6) around the user is equally large as the share of the belt portion (10) extending in the other direction around the user.

It should be further pointed out that claim 5 on appeal calls for each belt portion to be provided with a plurality of juxtaposed indicia. In addition, each indicium on the first belt portion has a corresponding indicium on the second belt portion, placed at essentially the same distance from the attachment of each belt portion to the rear portion of the article. It is respectfully submitted that the HJORTH reference simply fails to disclose these claimed features,

such that the rejection under 35 USC §102(e) cannot be sustained.

In view of the above, it is respectfully requested that the application be allowed on the basis of appealed claims 5-8.

Respectfully submitted,

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